

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

1. WAUHILLA McMAHAN,

Plaintiff,

v.

2. THE UNITED STATES OF AMERICA,
ex rel. Indian Health Service, an agency of the U.S.
Department of Health and Human Services, and

3. ALAVARO GONZALEZ-FERNANDEZ M.D.,

Defendants.

No.

FILED
JUL 17 2006
By William B. Guthrie
Clerk, U.S. District Court
Deputy Clerk
CIV 06 - 279 - RAW

COMPLAINT

Plaintiff Wauhilla McMahan, for her Claims for Relief against Defendants, states:

1. This action is brought pursuant to 28 U.S.C. §1346(b), the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*, and Oklahoma medical malpractice law.
2. On August 17, 2004, Plaintiff was a patient of Defendant Alavaro Gonzalez-Fernandez M.D. and W.W. Hastings Indian Hospital in Tahlequah, Oklahoma, where the defendant doctor performed cataract surgery on Plaintiff's left eye, causing Plaintiff to lose the eye.
3. W.W. Hastings Indian Hospital is operated by Defendant United States of America and the Department of Health and Human Services.
4. At the time of the surgery, the defendant doctor was acting as the agent, servant and/or employee of W.W. Hastings Indians Hospital and Defendant United States of America, acting within the scope of his office or employment.
5. In the alternative, the defendant doctor is individually liable for his negligence.
6. Plaintiff's injuries and loss of vision resulted from Defendants' negligence in that the surgery and care of the patient fell below acceptable medical standards. Defendant doctor utilized improper procedures in the surgery, resulting in a choroidal hemorrhage and loss of intraocular contents, at which time surgery should have been terminated.


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consents given

The procedure was continued, resulting in the loss of Plaintiff's eye. Defendant hospital was negligent in hiring, retaining and/or extending privileges to the Defendant doctor.

7. As a direct and proximate result of the negligence of Defendants, Wauhilla McMahan sustained severe, permanent and progressive personal injuries, has and will suffer pain of mind and body, has and will incur medical expenses, and has been damaged in the amount of \$2,000,000.00.
8. Plaintiff has timely complied with the notice of claim provision contained in the Federal Tort Claims Act, having submitted her notice of claim to Defendant, the United States of America, on January 13, 2006, Claim No. 06-0136. Plaintiff's claims were deemed denied on July 13, 2006, six months after they were filed.

WHEREFORE, Plaintiff prays for judgment against Defendants in the amount of Two Million Dollars (\$2,000,000.00), together with interest, costs and attorney fees, and for such further relief as this Court deems just and reasonable.



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